

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARILYN F. WILSON and U.S. POSTAL SERVICE,  
POST OFFICE, Dallas, TX

*Docket No. 00-1939; Submitted on the Record;  
Issued April 19, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's June 12, 1995 request for a hearing.

This case is on appeal before the Board for the second time. By decision dated December 15, 1999, the Board set aside the Office's May 20, 1997 decision denying reconsideration and remanded the case to the Branch of Hearings and Review to consider appellant's June 12, 1995 request for a hearing.<sup>1</sup> The Board also instructed the Office to grant appellant a merit review of her claim in the event that the Branch of Hearings and Review denied appellant's untimely request for a hearing.

In a decision dated December 29, 1999, the Office found that appellant's June 12, 1995 request for a hearing was untimely as appellant did not submit her request within 30 days of the Office's May 2, 1995 decision. Therefore, appellant was not entitled to a hearing as a matter of right. Additionally, the Office considered the matter in relation to the issue involved and denied appellant's request on the basis that the issue could equally well be addressed through the reconsideration process.

The Board finds that the Office properly denied appellant's June 12, 1995 request for a hearing.

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought.<sup>2</sup> If the request is not made within 30 days, a

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<sup>1</sup> Docket No. 98-401. The Board's December 15, 1999 decision is incorporated herein by reference.

<sup>2</sup> 20 C.F.R. § 10.616(a) (1999).

claimant is not entitled to a hearing or a review of the written record as a matter of right. The Office has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>3</sup> In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.<sup>4</sup>

Inasmuch as appellant's June 12, 1995 request for a hearing post-dated the Office's May 2, 1995 decision by more than 30 days, the Office properly concluded that she was not entitled to a hearing as a matter of right.<sup>5</sup> Moreover, the Office considered whether to grant a discretionary review and correctly advised appellant that the issue of whether she had any continuing employment-related disability or condition could equally well be addressed by requesting reconsideration.<sup>6</sup> Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's untimely request for a hearing.<sup>7</sup>

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<sup>3</sup> *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>4</sup> *Rudolph Bermann*, 26 ECAB 354 (1975).

<sup>5</sup> 20 C.F.R. § 10.616(a) (1999).

<sup>6</sup> The Board has held that a denial of review on this basis is a proper exercise of the Office's discretion. *E.g.*, *Jeff Micono*, 39 ECAB 617 (1988).

<sup>7</sup> Although the Office properly denied appellant's untimely request for a hearing, the Office has not yet followed the Board's previous instructions. As noted above, the Board's December 15, 1999 decision specifically instructed the Office to grant appellant a merit review in the event that the Branch of Hearings and Review denied her request for a hearing. In so doing, the Board explained that the Office's initial failure to consider appellant's June 12, 1995 request for a hearing severely compromised her opportunity to obtain merit review of the Office's May 2, 1995 decision before the Board. *Rob D. Klinger*, 46 ECAB 693, 699 (1995). Thus, in order to preserve appellant's opportunity to obtain merit review before the Board, the Board instructed the Office on remand to review the claim on the merits if the Branch of Hearings and Review declined to grant appellant a discretionary hearing. Upon return of the case record, the Office should review the claim in accordance with the Board's decision.

The December 29, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
April 19, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Member